

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

ORIGINAL

75-7457

IN THE
**United States Court of Appeals
FOR THE SECOND CIRCUIT**

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

vs.

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and

CHARLES SNOW,

Defendants-Appellants.

SUPPLEMENT TO JOINT APPENDIX

HAROLD E. KOHN, P.A.
1700 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-9900

and

FEDER, KASZOVITZ & WEBER
450 Seventh Avenue
New York, New York 10001
(212) 239-4610

*Attorneys for Defendant-Appellant,
Joseph Curran*

KENNETH J. FINGER
*Attorney for Defendant-Appellant,
Charles Snow*
14 Mamaroneck Avenue
White Plains, New York 10601
(914) 949-0308

ABRAHAM E. FREEDMAN
*Attorney for Defendant-Appellant-
Appellee*
346 West 17th Street
New York, New York 10011
(212) 929-8410

DUER & TAYLOR
*Attorneys for Plaintiff-Appellant-
Appellee*
74 Trinity Place
New York, New York 10006
(212) 944-7482

BLOOM & EPSTEIN
*Attorneys for Defendant-Appellant,
Shannon J. Wall*
110 East 42nd Street
New York, New York 10017
(212) 687-6050



PAGINATION AS IN ORIGINAL COPY

Table of Contents

	Page
Affidavit of Arthur E. McInerney Sworn to April 30, 1975	SA1
Exhibit A, Letter Dated April 16, 1975, Annexed to Foregoing Affidavit	SA8

Affidavit of Arthur E. McInerney
Sworn to April 30, 1975.

JAMES M. MORRISSEY.

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA,
JOSEPH CURRAN, SHANNON J. WALL,
CHARLES SNOW, JAMES NIMMO,
ABRAHAM E. FREEDMAN and CHARLES SOVEL.

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ARTHUR E. MCINERNEY, being duly sworn, deposes and
says:

I am an attorney and counsellor at law, duly admitted at the March Term in 1961 to practice in all of the Courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York since April 25, 1962, the United States Court of Appeals for the Second Circuit since April 30, 1962 and the Supreme Court of the United States since March 8, 1965. I am a member of the Association of the Bar of the City of New York, the Federal Bar Council, the New York State and the American Bar Associations. I am experienced in the field of complex litigation both in the federal and state courts. I have continuously engaged in the practice of law since my admission to the bar in 1961 and am a member of the firm of

Affidavit of Arthur E. McInerney.

Duer & Taylor, attorneys for plaintiff herein, with offices at 74 Trinity Place, New York City.

I make this affidavit in support of our application for a fee on account of the services rendered herein on behalf of the membership of the National Maritime Union of America (NMU).

I have some experience in labor matters arising out of the Landrum Griffin Act (LGA). See Morrissey v. Curran (69 Civ. 442), 302 F Supp 32 (S.D.N.Y. 1969) affirmed in part reversed in part 423 F2d 393 (2d Cir. 1970) cert denied 399 U.S. 928, 400 U.S. 826 (1970) on remand 351 F Supp 775 (S.D.N.Y. 1972) affirmed 483 F2d ⁴⁸⁰ (2d Cir. 1973) cert denied 414 U.S. 1128 (1974) and other unreported decisions therein.

This is an anomalous situation.

My individual client, James Morrissey, has a total recovery of \$333,500. Our retainer with Mr. Morrissey is oral. The terms of that agreement are that my firm is to be paid one-third of the net recovery realized by Mr. Morrissey after the deduction of all the expenses incurred in the prosecution of the suit. Under the terms of the agreement, we also were to make application to the Court for a fee for the services which we rendered which were of benefit to the membership as a whole and let the Court determine whether such fee should be in addition to the fee to be paid by Mr. Morrissey, or whether he should have credit for some part or all of the fee paid by the Union.

Affidavit of Arthur E. McInerney.

In preparation for the trial of this case I personally expended four hundred forty eight and one-half hours drafting legal papers, studying the law, examining documents, preparing for depositions, reading and submitting legal papers in opposition, conducting depositions, interviewing witnesses and potential witnesses, conferring with my partners and associate, appearing at pre-trial conferences with the Court (Judges Griesa and Connor), in preparation for trial and finally conducting the trial itself. There were substantial additional hours expended by my partner John S. Chapman Jr. for which we make no claim for compensation.

The Court had the opportunity to observe the presentation of the case.

I would respectfully suggest that the outcome of the trial itself would be the best evidence of the quality of the services rendered.

Of course, the fact that the result was reasonably successful increases the value of the services rendered to the membership.

A "slap on the wrist" or the imposition^{of} nominal damages would have resulted in no real or substantial benefit to any of the members. Such a result would have invited more of the same. The chilling effect on the membership would have been heightened-not diminished.

It is the sting of the punitive damages which gives meaning to the Bill of Rights of the LGA.

Affidavit of Arthur E. McInerney.

No NMU official will have the audacity to take such precipitous action against a union member in the future.

This jury has put NMU officials-and all union officials on notice that they cannot succumb to their baser instincts and trample on the little guy-without danger of paying for it.

This has been an unusual case.

Plaintiff encountered substantial opposition during the discovery proceedings-particularly with respect to the taking of the deposition of Messrs Curran and Snow. Those obstacles were largely overcome.

The defendants represented at the Discovery and Inspection Document Marking Session which had taken place on the 13th day of March, 1973 that they had no records relating to the plaintiff, except for the records produced at that time.

The Morrissey dossier (Exhibit 24 in evidence) was not then produced.

In addition, the said defendants were asked to produce at such Document Marking Session "all memoranda relating to the facts concerning the arrest of James M. Morrissey on July 1, 1971 at 36 Seventh Avenue, New York, New York.

The Snow memorandum regarding Morrissey's arrest was not then produced-nor was it ever produced.

Mr. Snow's deposition was taken in two sessions. The first session was taken at his home in Rego Park, Queens, on April 8, 1974 and the second session was taken at the

Affidavit of Arthur E. McInerney.

Union Hall on the 6th day of September, 1974. On both occasions, the defendants had opposed the taking of Mr. Snow's deposition claiming that he was too ill to be examined. That contention was twice overruled first by Judge Connor and then by Magistrate Jacobs.

But on the second session of his deposition (eighteen months after the document marking session) Mr. Snow testified that he kept a file on Morrissey and "that arrest was certainly on record if nothing else".

He then testified that he did not know the whereabouts of the Morrissey dossier "because since I got sick the building has been relocated seven times and I'm missing half my files."

But at the time of the document marking session, the NMU had not been relocated and it is a mystery why the dossier was not produced at that time. (It was relocated just once on October 30, 1973.)

I am informed and believe that a full investigation was made by the police and by the N.Y. District Attorney's office and persons from the NMU including Snow were interviewed concerning Morrissey's mugging.

Of course, that being so, it is not unreasonable to assume that that dossier contained a full report on Mr. Morrissey's mugging which had taken place right outside the NMU Hall-and that that report had also been removed.

Had that been the fact, it would have paved the way for the admission of the Lucio Article (Exhibit 18 for

Affidavit of Arthur E. McInerney.

identification only) and for the introduction of Dr. Messer's testimony on the subject (a copy of Dr. Messer's report of the mugging and Morrissey's injuries is annexed hereto and made a part hereof and marked Exhibit A). This report indicates the substance of what his testimony would have been.

In other words, there can be little doubt that the tactics engaged in by the defendants made my task more difficult by the suppression of admissible evidence.

It also would have put the introduction of evidence into a different posture-and evidence which was excluded in the present state of the record might well have been deemed admissible had it been contained in the Morrissey dossier.

That would have not only made my task less difficult but it would also have made the jury's task simpler.

Plaintiff's out of pocket expenses were substantial.

This case has produced tangible benefits and intangible benefits as well.


The "prophylactic" and "therapeutic" aspects of this action to the NMU membership are intangible and the only benefits which should be considered on this application.

Naturally, once again compensation for our services on this phase was wholly contingent on success.

SA7

Affidavit of Arthur E. McInerney.

Under the circumstances, we make no suggestion as to the value of our services and will be guided by the wisdom and experience of this Court on the subject.


ARTHUR E. MCINERNEY

Sworn to before me this
30th day of April, 1975

JOHN S. CHAPMAN, JR.
Notary Public, State of New York
No. 10000000000
Qualified in Westchester County
Expires March 30, 1976

SA8

Exhibit A, Letter Dated April 16, 1975,
Annexed to Foregoing Affidavit.

HENRY D. MESSER, M.D., F.A.C.S.
SUITE 4A
30 FIFTH AVENUE
NEW YORK, NEW YORK 10011
ALGONQUIN 4-3422

April 16, 1975

Messrs. Duer & Taylor
Attorneys at Law
74 Trinity Place
New York, New York 10006

RE: James Morrissey
D/A: 9/14/66

Dear Sirs:

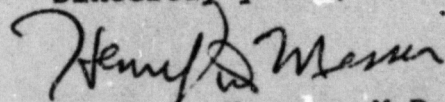
Mr. Morrissey first came under my care on September 14, 1966, at St. Vincent's Hospital. The history was given that he had been beaten over the head with pipes and there was some bleeding from his nose. There was a large hematoma of the right orbit but the eye itself was not injured. The patient was conscious and there were no neurological abnormalities.

X-rays of the skull revealed many fractures.

The patient complained of severe headache over the next several days but remained conscious and did well. An eye consultation was performed by Dr. D'Amico. On September 30, 1966, he had improved sufficiently to be discharged from the hospital to continue convalescence at home. He was last seen in my office on November 23, 1966. At that time he was completely asymptomatic and ready to return to work.

An EEG on September 26, 1966, had been quite abnormal, but a follow-up on June 8, 1967, was entirely within normal limits.

Sincerely yours,


Henry D. Messer, M.D.

HDM:ig

United States Court of Appeals
for the Second Circuit

James Morrissey,

Plaintiff-Appellant- Appellee,

vs

National Maritime Union of America,

Defendant-Appellant-Appellee,

and

Joseph Curran, Shannon J. Wall and Charles Snow,

Defendants-Appellants.

**AFFIDAVIT
OF SERVICE
BY MAIL**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Charles esposito

, being duly sworn, deposes and says that he
is over the age of 18 years, is not a party to the action, and resides
at 12 State Street, valley Stream, New York
That on October 31, 1975, he served 3 copies of

Supplement to Joint Appellate
on

Harold E. Kohn, PA
1700 Market Street
Philadelphia, Penn. 19103
and

Feder Kasovitz & Weber
450 Seventh Avenue
New York, New York 10001

Attorneys for Joseph Curran

Abraham E. Freedman
Attorney for Maritime Union
346 West 17th Street
New York, New York 10011

Bloom & Epstein
Attorneys for Shannon J. Wall
110 East 42nd Street
New York, New York 10017

Kenneth J. Finger,
Attorney for Charles Snow
14 Mamaroneck Avenue
White Plains, New York 10601

by depositing the same, properly enclosed in a securely-sealed,
post-paid wrapper, in a Branch Post Office regularly maintained by
the United States Government at 350 Canal Street, Borough of Manhattan,
City of New York, addressed as above shown.

Sworn to before me this
31st day of October, 1975

.....
Charles Esposito.....

John V. Esposito
JOHN V. ESPOSITO
Notary Public, State of New York
No. 30-0932350
Qualified in Nassau County
Commission Expires March 31, 1977

